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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,059	10/30/2003	Donna M. Wilson	MSP001	8133
34496	7590	11/16/2006	EXAMINER	
RICHARD C. CALDERWOOD 2775 NW 126TH AVE PORTLAND, OR 97229-8381			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER

3782

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/697,059

Applicant(s)

WILSON, DONNA M.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5-11,13,14,16-20,24,25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13,14,16-20,24,25 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5-11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 1 recites, "bumper connectors... at positions substantially removed from the hitch receiver..." The metes and bounds of the limitations "substantially removed" are unclear. Because the specification fails to clearly define the metes and bounds of this limitation, Examiner considers a bumper connector to be substantially removed from a hitch receiver as long as the bumper connector itself is not in direct contact with a hitch receiver.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 7, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane et al. (US 6,662,983) in view of Johnson (US 6,474,522).

Regarding claim 1, Lane et al. disclose a rack system for carrying cargo items on the rear of a vehicle having a hitch receiver (28), the rack system comprising a first hitch (4) for coupling to the hitch receiver; a tray (17) coupled to the first hitch for supporting

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weight of the cargo items; vertical rails (3 & 8); horizontal rails (16) connected to the vertical rails; and support bars (15) extending substantially rearward and coupled to the horizontal rails.

Lane et al. fails to disclose bumper connectors at positions substantially removed from the hitch receiver, as their rack system is disclosed as being attached to a vehicle's receiver hitch with no bumper connectors. Johnson, however, discloses an attachment device that provides a hitch receiver on vehicles that would otherwise not have a hitch receiver. The attachment device includes a hitch receiver (15), bumper connectors (35), and a connecting plate (25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the rack system of Lane et al. to the bumper of a vehicle using the attachment device of Johnson, in order to utilize the rack on either a vehicle without a pre-existing hitch, or a vehicle in which the hitch was already in use, such as for hauling a trailer.

Regarding the bumper connectors being substantially removed from the hitch receiver, the bumper connectors of Johnson are attached to the connecting plate rather than the receiver hitch, and are therefore considered to be substantially removed from the hitch receiver to the degree that Applicant has claimed.

Regarding claim 5, the stabilizer bar (12) of the modified Lane et al. rack system would be coupled to each of a bumper connector and the tray via the rest of the rack structure that interconnects these parts.

Regarding claim 7, the rack system of Lane et al. includes rail connectors (7, 11, and the bolts that go with nuts 27) that couple the horizontal rails to the vertical rails.

Regarding claim 8, at least some of the rail connectors (the bolts that go with nuts 27) are laterally moveable to enable lateral repositioning of at least rails (16).

Regarding claim 13, the modified rack system of Lane et al. satisfies the limitations of the claim when the various portions of the rack system are considered as follows: hitch (4), vertical rails (3 & 8), horizontal rails (11 & 12), support bars (15), and bar connectors (16), where the bar connectors are laterally moveable to enable lateral repositioning of the support bars.

5. Claims 1, 5, 7-10, 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allsop et al. (US 5,658,119) in view of Johnson.

Regarding claims 1 and 14, Allsop et al. disclose a rack system (Figure 1) for carrying cargo on the rear of a vehicle, the rack system comprising a first hitch (322) for coupling to the hitch receiver; a tray (318) coupled to the first hitch for supporting the weight of the cargo items; vertical rails (314, 316); horizontal rails (328, 330, 354, Figure 2) connected to the vertical rails; and support bars (320) extending substantially longitudinally and coupled to the horizontal rail (328).

Allsop et al. fails to disclose bumper connectors, as their rack system is disclosed as being attached to a vehicle's receiver hitch. Johnson, however, discloses an attachment device that provides a hitch receiver on vehicles that would otherwise not have a hitch receiver. The attachment device includes a hitch receiver (15), bumper connectors (35), and a connecting plate (25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the rack system of Allsop et al. to the bumper of a vehicle using attachment device of Johnson, in order to

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utilize the rack on either a vehicle without a pre-existing hitch, or a vehicle in which the hitch was already in use, such as for hauling a trailer.

Regarding the bumper connectors being substantially removed from the hitch receiver, the bumper connectors of Johnson are attached to the connecting plate rather than the receiver hitch, and are therefore considered to be substantially removed from the hitch receiver to the degree that Applicant has claimed.

Regarding the newly added limitation in claim 14, requiring that the tray be positioned significantly below the support bars, because Applicant has failed to define clear structural relationships and orientations between the claimed rack portions, Examiner considers the tray of Allsop et al. to be significantly below the support bars when Figure 2 is viewed at an angle 90 degrees counterclockwise from the orientation shown.

Regarding claims 5, the stabilizer bar (342) of the modified Allsop et al. rack system would be coupled to each of a bumper connector and the tray via the rest of the rack structure that interconnects these parts.

Regarding claim 7, the rack system of Allsop et al. includes rail connectors (326) that couple the horizontal rails to the vertical rails.

Regarding claims 8 and 9, the rail connectors (326) of Allsop et al. are standard bolts with nuts and washers that allow lateral movement of at least one horizontal rail (354) and pivotal movement between the vertical rails (314, 316) and the bumper supports.

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Regarding claims 10 and 19, Allsop et al. disclose springs that are coupled to the bumper connector via the rack structure interconnecting the two in order to retain pin (346) in slot (348) and maintain an upper portion of the rack system against the vehicle (in an upright position).

Regarding claim 20, the modified rack system of Allsop et al. does not require that the vehicle be modified in any way before mounting the rack thereon with the rack being mounted only to the vehicle's bumper and hitch receiver.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in either of paragraph #4 or paragraph #5 above in view of Pasley (US 5,215,234).

The modified Lane et al. and Allsop et al. rack systems includes the claimed features except for a lockbox secured to the tray. Pasely, however, also discloses a rack system to be mounted at the rear of a vehicle, the rack having a tray, and teaches that a lockbox may be secured to the tray. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place a lockbox on the tray of either of the modified rack systems of Lane et al. or Allsop et al., as taught by Pasley, in order to provide a user with an enclosed and protected container in which they could store and transport their cargo.

7. Claims 1, 7, 9, 11, 14, 20, 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griewahn (US 5,337,932 A) in view of Mitchell (US 6,712,248 B2).

Regarding claims 1 and 14, Griewahn discloses a rack system for carrying cargo items on the rear of a vehicle having a hitch receiver, the rack system comprising bumper connectors (40/42/44) for coupling to the bumper of the vehicle; vertical rails (28,46,48,50) coupled to the bumper connectors; horizontal rails (64,68) connected to the vertical rails; and support bars (54,58) extending substantially rearward and coupled to the horizontal rails.

Griewahn fails to disclose a first hitch for coupling to the hitch receiver and a tray coupled to the hitch. Griewahn does disclose an attachment basket (Figure 8) for the rack system that allows a user to store additional cargo at the base of the vertical rack. Mitchell also discloses an attachment basket (Figure 10) and teaches that the basket can be mounted on a hitch (80) to be received in a vehicle's hitch receiver. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the basket attachment of Griewahn with that of Mitchell, as both are art-equivalent basket attachments that would allow a user to store additional cargo at the base of the vertical rack. To utilize the basket attachment of Mitchell on the rack system of Griewahn would also allow a user to use just the basket attachment without needing to also have the vertical rack mounted to the vehicle as would be required by the original basket attachment of Griewahn.

Regarding claim 7, Griewahn discloses rail connectors (56,50,62,66) connecting the horizontal rails to the vertical rails.

Regarding claim 9, the vertical rails (46,48) of Griewahn are connected to the bumper connector by a single fastener (44) upon which they could pivot.

Regarding claim 11, the rack system of Griewahn includes padding (70) on the horizontal rails such that the padding contacts the rear of the vehicle (Figure 2) and protects the vehicle from direct contact with the rails.

Regarding claim 20, the modified rack system of Griewahn does not require that the vehicle be modified in any way before mounting the rack thereon with the rack being mounted only to the vehicle's bumper and hitch receiver.

Regarding claim 24, the support bars of Griewahn can be repositioned by adjusting the repositioning mechanism (51/52) to change the angle at which the bars are held.

Regarding claim 25, the modified Griewahn rack system includes all of the claimed features and is capable of supporting a surfboard thereon, effectively satisfying the limitations of the claim.

Regarding claim 27, the support bars of Griewahn are coupled to the horizontal bars such that the support bars can move and may be repositioned (via 51/52) to adapt the cargo rack for use with a variety of cargo items.

8. Claims 1, 7, 8, 14, 16-18, 20, 24, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel (US 5,699,985) in view of Hutyra (US 4,815,638).

Regarding claims 1, 7, 14, 17, 25, 27, Vogel discloses a vehicle comprising a frame, a body coupled to the frame, a rear bumper and a hitch receiver (14) both coupled to the frame at a rear of the body, and a tray (18/19) coupled to the hitch receiver via a first hitch (10). Vogel fails to disclose a cargo rack coupled only to the bumper, the cargo rack having vertical rails, horizontal rails coupled to the vertical rails,

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and support bars movably coupled to the horizontal rails. Note that the rack system of Vogel is intended to carry mopeds, providing only a tray member on which the moped is held.

Hutyra, however, also discloses a rack system for carrying a moped and teaches that in addition to a tray member (46) for supporting the moped, additional rack members (72) may be attached to the vehicle's bumper (22) for engaging the moped's handle bars for more support. These members (72) are attached only to the bumper and include vertical rails (79,80), horizontal rails (84,72) coupled to the vertical rails and secured via rail connectors (88), and support bars (74) moveably coupled to the horizontal rails. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include vertical support members in addition to the tray in the rack system of Vogel, as taught by Hutyra, in order to provide more support for the moped in its upright position.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over the modified Vogel rack system which is capable of being used in the intended manner, i.e., supporting one of a surfboard, kayak, or ladder on the support arms. There is no structure in the modified Vogel rack system that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 8, the rail connectors (88) of Hutyra are laterally moveable (when unscrewed) to allow lateral movement of the bumper supports.

Regarding claim 16, at least one of the horizontal rails (72) is slidably coupled to vertical rail (79) when the connector (87) is removed.

Regarding claim 18, the modified Vogel rack system includes at least one stabilizer (12) coupled to the tray (18/19) and to the hitch (10), which can be considered a vertical rail. Examiner notes that in this claim, "a vertical rail" does not have to refer back to the vertical rails already set forth in the claims.

Regarding claim 20, the modified rack system of Vogel does not require that the vehicle be modified in any way before mounting the rack thereon with the rack being mounted only to the vehicle's bumper and hitch receiver.

Regarding claim 24, the support bars of the modified Vogel rack system can be repositioned, effectively satisfying the limitations of the claim.

### ***Response to Arguments***

9. Applicant's arguments filed 8/28/06 have been fully considered but they are not persuasive.

Regarding the combination of Lane and Johnson and claim 1, Applicant has asserted that the combination does not teach a bumper-attached vertical rail system. Examiner points out that Lane discloses a vertical rail system that is attached to a bumper via the mechanism of Johnson. Regarding claim 5, Applicant has asserted that the modified Lane rack fails to include a stabilizer bar. Examiner points out that the modified Lane rack includes a stabilizer bar (12). Regarding claim 8, Applicant has asserted that the modified Lane rack fails to include laterally moveable rail connectors.

Examiner points out that the modified Lane rack includes laterally moveable rail connectors (bolts that go with nuts 27).

Regarding the combination of Allsop and Johnson, and claims 1 and 14, Applicant has asserted that the combination does not result in both a bumper mounted vertical rack and a hitch mounted tray. Examiner points out that nowhere in claims 1 and 14 is the bumper mounted vertical rack and hitch mounted tray claimed as being separate entities that are not part of one another, and that the modified Allsop rack includes all of the claimed structure as set forth in paragraph #5 above. Regarding claim 8, Applicant has asserted that the modified Allsop rack does not include laterally moveable rail connectors. Examiner points out that the modified rack of Allsop includes rail connectors (326) that translate laterally as the rack is pivoted. Regarding claim 9, Applicant has asserted that the modified Allsop rack does not have rails pivotally coupled to the bumper connector. Examiner points out that the modified Allsop rack includes rails (314,316) that are coupled to the bumper connector via interconnecting rack structure and are coupled in such a way that they can pivot. The claim does not currently require that the rails be directly coupled to the bumper connectors with no intermediate structure linking the two together. Regarding claim 19, Applicant has asserted that the springs of the modified Allsop rack are not equivalent to those claimed. Examiner points out that the springs of the modified Allsop rack do effectively retain the rack in an upright position, a position directed towards or against the rear of the vehicle. Regarding claim 20, Applicant has asserted that the modified Allsop rack is not connected to a vehicle at both a hitch and a bumper. Examiner points out that the

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modified Allsop rack is connected to a hitch, which is connected to the vehicle via bumper supports, and therefore the rack is connected to both the hitch and the bumper.

Regarding the combination of Vogel and Hutrya, Applicant has asserted that a motorcycle rail is not a tray. Examiner is of the position that a motorcycle rail is a tray to the degree that Applicant has claimed. The motorcycle rail of Vogel is a flat receptacle with raised edges and can be considered a tray to the degree that objects can be supported thereon.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
11/9/06

  
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